IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL [LODGING] NO.415 OF 2007
IN
CHAMBER SUMMONS NO.1224 OF 2004
IN
NOTICE NO.233 OF 2004
IN
EXECUTION APPLICATION NO.27 OF 2004
IN
SUIT NO.3388 OF 1990

Palatty Joseph Peter .... Appellant
Vs.
Walford Ladislau Reeves,
(since deceased)
Mrs. Mabel Reeves .... Respondent
Vs.
Allen D'Silva .... Respondent

AND

APPEAL [LODGING] NO.416 OF 2007
IN
CHAMBER SUMMONS NO.1223 OF 2004
IN
NOTICE NO.232 OF 2004
IN
EXECUTION APPLICATION NO.26 OF 2004
IN
SUIT NO.3389 OF 1990

Palatty Joseph Peter .... Appellant
Vs.
Mrs. Mabel Reeves .... Respondent
Vs.
Allen D'Silva .... Respondent

Shri Milind Vasudeo i/b Ms Madhuri V. Gaikwad
for the Appellant in both Appeals.

Ms Alpana Ghone i/b M/s. DSK Legal for the
Respondent No.2 in both Appeals.

CORAM: R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATED: MAY 03, 2007

P.C:

1. Heard. Since common questions of law and facts arise in both these appeals, they were heard together and are being disposed of by this common order.

2. The appellant challenges the common order dated 4-4-2007 passed in Chamber Summons No.1223 and 1224 of 2004. The order relates to recording of findings before the Commissioner.

3. The learned Advocate appearing for the respondent No.2 has raised a preliminary objection about the non-maintainability of the appeals on the ground that the impugned order does not decide any right of the appellant as such in relation to the merits of the case. It cannot be disputed that the impugned order does not decide any right to the subject-matter of dispute and, therefore, on that count itself the appeals would be liable to be dismissed.

4. However, while dismissing the appeals, it is required to be clarified that the observations made by

the learned single Judge in the impugned order to the effect "Any other question asked during the recording of evidence, the Commissioner may only record that question, but it will have to be understood that the said question is not appropriate and will have to be ignored." do not relate to the powers of the Commissioner but are in relation to the powers of the Court in view of the provisions of law comprised under Order 18, Rule 4 of the C.P.C., and in particular, the provisions of sub-rule (4) thereof. The observations to the effect "Any other question asked during the recording of evidence, the Commissioner may only record that question, but it will have to be understood that the said question is not appropriate and will have to be ignored." should not be misconstrued to mean that the recording will have to be only regarding the questions and not regarding the answers to the questions. With these observations, the appeal are disposed of.

(D.G.Karnik, J.) (R.M.S.Khandeparkar, J.)

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